
Amendment of guarantee and after-sales services system for consumer contracts

Legal flash: Consumer law

May 28, 2021



[Royal Decree 7/2021](#), of April 27, 2021, transposed two European Union Directives concerning consumer contracts: (i) Directive (EU) 2019/770, on certain aspects concerning contracts for the supply of digital content and digital services; and (ii) Directive (EU) 2019/771, on certain aspects of contracts for the sale of goods.

The two directives share some content and have common objectives: harmonizing certain aspects concerning contracts for the sale of goods and contracts for the supply of digital content and digital services to consumers, to achieve a true digital single market, reinforce legal certainty and reduce the cost of these types of transactions.

Transposing the two directives into Spanish law involves making important amendments to Royal Legislative Decree 1/2007 (November 16), approving the consolidated text of the Spanish Consumer Protection Act ("TRLGDCU"), particularly regarding guarantees and after-sales services in these types of contracts.

In this legal flash, we highlight the most important general amendments to TRLGDCU and their impact on consumer contracts.



Main amendments to guarantee and after-services system for consumer contracts

In the following sections, we summarize the main developments introduced by Royal Decree-Law 7/2021 ("RDL 7/2021") in the system under TRLGDCU on guarantees and after-sales services for consumer contracts:

> **Expansion of the scope applicable to guarantees and after-sales services: contracts for the sale of goods with digital elements and contracts for the supply of digital content and digital services**

Before the reform introduced by RDL 7/2021, the guarantee and after-sales service system under TRLGDCU only applied to contracts for the sale of physical goods between businesses and consumers. The reform broadens the scope of application of this system, extending it to: (i) **contracts for the sale of goods with digital elements**, and (ii) **contracts for the supply of digital content and digital services**.

- (i) **Goods with digital elements** are movable tangible assets that include digital content or digital services, or that are interconnected with that digital content and those services, and their absence would prevent those goods from carrying out their function.
- (ii) **Contracts for the supply of digital content and digital services** are those where a business supplies digital content or services to consumers, and the consumers pay a price or provides personal data as consideration.

> **Amendments to the regime for conformity of goods, and digital content and services: new criteria for determining the lack of conformity of those goods or services with the contract of sale**

The guarantee and after-sales service system established under TRLGDCU comes into play in those cases in which the item purchased under the contract is not in conformity with the contract of sale. RDL 7/2021 **amends the requirements that goods, and digital content and services must meet, so they can be considered to be in conformity with the contract of sale with the consumer**.

From now on, for the item purchased by a consumer under a contract to be considered in conformity with the contract, that item must meet eight conformity requirements, which, under the reform, are divided and grouped based on two new perspectives: a subjective and an objective perspective.

(i) Subjective requirements of conformity

From a subjective standpoint, to conform to the contract, the goods, and digital content and digital services must:



- **Match the description**, type of good, amount and quality and must possess the functionality, compatibility, interoperability **and the other characteristics established in the contract**.
- **Be appropriate for the consumer's specific purposes** that have been communicated to the business, if the business accepted them before entering into the contract.
- **Be delivered or supplied together with all accessories and instructions**, including those relating to installation or integration and customer assistance, as stated in the contract.
- **Be supplied with updates** in the case of goods, **and be updated** in the case of digital content and digital services, as established in the contract.

(ii) Objective requirements of conformity

From an objective standpoint, to conform to the contract, the goods, and digital content or digital services must also:

- **Be appropriate for the purposes for which** the goods, and digital content or digital services of the same type **are normally used**, considering technical standards and codes of conduct in the sector's industry.
- **Be of the quality and in line with the description of the sample or model** of the product or conform to the **test or presented example** of the digital content or digital service that the business made available to the consumer before the contract was signed.
- Be delivered or supplied together with **the accessories and, particularly, with the packaging and the instructions** that the consumer may reasonably expect to receive.
- Present the **amount and possess the qualities and characteristics, particularly those relating to the durability of the product, accessibility and the continuity of the digital content or digital service**, as well as the functionality, compatibility and security that are normally present with respect to goods, or digital content or digital services of the same type that the consumer may reasonably expect.

> **New consequences arising from the lack of conformity with the contract of sale: consumer's right to suspend payment of the price**

As occurred before the reform, in the case of non-conformity with the contract of sale, the consumer will continue to have available the remedies recognized under TRLGDCU in recent years, and that are in line with the legal guarantee system. However, the new text of TRLGDCU **introduces additional consequences arising from the lack of conformity with the contract of sale with the consumer:**



- (i) For the first time, TRLGDCU expressly recognizes the **consumer's right to suspend payment** of any part of the price of the good, or of the digital content or digital services, in the case of a lack of conformity with the contract of sale, and this will apply until the business restores the goods to conformity.
- (ii) When a **breach of third-party rights** (particularly of intellectual property rights) impedes or limits the use of the goods or of the digital content or digital services, **the consumer can require the business to bring the item into conformity, or require a reduction of the price or termination of the contract.**

> **Amendments on the regulation of the remedies under the legal guarantee: the same remedies, but with better conditions**

In general, the reform of TRLGDCU does not amend the list of remedies available to the consumer under the legal guarantee in the case of a lack of conformity with the contract of sale. In those cases, the consumer will continue to have available the same remedies recognized by TRLGDCU until recently, grouped in two levels: first and of a primary nature, the remedies to bring the item into conformity (the repair or replacement of the item purchased under the contract); and second, and as remedies of a secondary nature, the reduction of the price or termination of the contract.

Although the list of remedies making up the legal guarantee and their order of preference continue the same after the reform, **the new TRLGDCU expands the cases in which a consumer**, in a situation in which the purpose of the contract is non-conforming and separate from the repair and replacement remedies, **can directly require a proportionate reduction of the price or contract termination:**

- (i) With the new wording of TRLGDCU, consumers **can directly require a proportionate reduction of the price or contract termination in either of the following cases**, which are additional to those available up until now:
 - when **another lack of conformity** appears after the business's attempt to bring the goods, or digital content or services into conformity (i.e., after the business has tried to repair or replace the item purchased under the contract);
 - when **the lack of conformity is so serious** that it justifies the immediate reduction of the price or the termination of the contract; and
 - when the business **has declared, or this is clearly understood in the circumstances, that it will not repair or replace** the goods, or digital content or services within a reasonable time or without any significant inconvenience to the consumer.



- (ii) As was the case before the reform, a consumer cannot terminate the contract when the lack of conformity is of little importance. However, the reform of TRLGDCU adds an exception to this general rule: in cases in which the consumer **has provided personal data** as consideration for the contract, the consumer **can demand termination** even when the lack of conformity is of little importance.
- (iii) The reform of TRLGDCU also creates **new obligations for businesses and consumers in the case of the termination** of contracts for the sale of goods and the supply of digital content or digital services.

> **New periods applicable to guarantees and after-sales services: longer periods benefiting consumers**

One of the most relevant aspects of the reform of TRLGDCU is the **amendment of the deadlines applicable to different aspects of the legal guarantee and of the after-sales service**. The following table compares amendments for each one of the most relevant applicable periods.

Type	Previous term	New term (RDL 7/2021)
Term of the legal guarantee	2 years	Goods: 3 years from the delivery date of the good; Digital content or digital services: 2 years from the supply date
Period of presumption for the preexistence of non-conformity, unless proven otherwise by the business	6 months	Goods: 2 years from the delivery date of the good; Digital content or digital services: 1 year from the supply date
Statutory limitation period for taking action relating to non-conforming goods and digital content or digital services	3 years from the delivery date	5 years from the date the non-conforming situation is determined
Statutory limitation period for the action or the right to recover the products the consumer and user delivered to the business for repair	3 years	1 year from the delivery date of the product for repair
During this time, the manufacturer must guarantee the existence of an appropriate technical service, and of replacement parts.	5 years	10 years from the date on which the good is no longer manufactured
Time in which the business makes a refund after the price has been reduced or the contract terminated	-	14 days from the date on which the business was informed of the consumer's decision



> **Amendments in relation to the commercial guarantee: the importance of advertising and its binding nature for businesses**

In addition to introducing important amendments in the legal guarantee system, the reform introduces a **new regulation of the commercial guarantee that the business can grant to the consumer**. The new regulation of TRLGDCU makes the link between the contractual conditions applicable to that commercial guarantee and the conditions announced in advertising by the business relating to the commercial guarantee even greater, unless, before the contract signing, the associated advertising was corrected in the same way that it was made.

> **Entry into force**

The reform of TRLGDCU will enter into force on January 1, 2022. Articles 126 and 126 bis, on the system for modifying digital content and digital services, and on the termination of contracts due to modifications to digital content and digital services, will only be applied to contracts signed from that date.

We highlight that the lawmaker has not been clear when establishing the temporary scope of the reform: final provision 8 of RDL 1/2007 could have left the door open to a retroactive application of the reform to consumer contracts signed before January 1, 2022, although this possibility is contrary to Directive 2019/771, which it transposes.

So now what? Next steps

- > For more information than that provided in this document regarding the new guarantee and after-sales service system under TRLGDCU and its impact on relationships with consumers, please contact Cuatrecasas.
- > Compliance with regulations concerning consumer contracts is an essential part of a business's day-to-day operations, particularly for those that market retail products and services. Knowledge of legislative changes and their adaptation concerning relationships with consumers will lead to strategic competitive advantages in the market.
- > The reform of TRLGDCU also brings about other questions in addition to those summarized in this document and raises issues that must be resolved effectively to avoid or mitigate future risks involving consumer contracts. This is particularly the case with matters relating to the entry into force of the reform and its possible effects on contracts signed with consumers before January 1, 2022.
- > Our team of lawyers specializing in consumer law and new technologies advise clients to ensure they understand the changes and their effects on relationships with consumers, so that the terms and conditions of consumer contracts can be adapted to avoid possible penalties arising from not meeting the applicable law.



- > We accompany our clients in all legal phases of consumer contracts, helping them to design, adapt and integrate the contractual terms and conditions most appropriate for their interests in line with the law, including appropriate planning and training to foresee possible risks and prevent non-compliance.

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